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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-619-MA of 2013

Date of decision: February 06, 2015

Ram Kumar

.....Applicant

Versus

Mukesh Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Atul Jain, Advocate
for the applicant.

SABINA, J

Respondent had faced trial in a compliant filed by the applicant under Sections 138 of Negotiable Instruments Act, 1881 qua dishonour of cheque bearing No.442911 in the sum of ₹3,00,000/- on 21.09.2009. Trial Court vide order dated 17.11.2012 ordered the acquittal of the respondent. Hence, the present application under Section 378(4) of Code of Criminal Procedure, 1973 for grant of leave to appeal by the complainant.

I have heard learned counsel for the applicant and have gone through the record available on the file carefully.

Trial Court while ordering the acquittal of the respondent has held as under:-

“12. The complainant by examining Sh. Ram Kumar as CW1 and proving the documents cheque as Ex.C1, memo as Ex.C2, copy of legal notice as Ex.C3 and postal receipt as Ex.C4 has been able to raise a presumption under Section 139 of Negotiable Instrument Act that the cheque in question was issued by the accused in discharge of his legally enforceable

debt. However, the presumption under section 139 of Negotiable Instruments Act is not an absolute presumption but is a rebuttable presumption. The accused, in the present case, has fully been successful in rebutting the presumption of Section 139 of Negotiable Instrument Act and has fully been able to prove his defence. He states that he gave cheque in question, which was blank, to Eco Electro vision alongwith his two other cheques bearing No.442913 and 442912 dated 21.8.2009 and 21.10.2009 which were also blank for the purchase of refrigerator by one Mr. Mukesh Narula. To prove this fact, he has examined two persons DW1 Pardeep Kumar and DW2 Sumeet. The testimony of both these witnesses prove that three blank signed cheques had been issued by the accused for the purchase of refrigerator by Mr. Mukesh Narula. Now the question arises whether the cheque in question was one of those three cheques or not? Yes the cheque in question was one of those three cheques which fact stands proved from Ex.D1 i.e. the retail invoice of the purchase of Refrigerator by Mukesh Narula. Three cheques have been mentioned in this retail invoice Ex.D1 i.e. cheque No.442913, 911 and 912 dated 21.8.2009, 21.9.2009 and 21.10.2009 respectively. Ex.D1 shows the payment of purchase through three chequest of Rs.3000/- each showing cheque Nos.442913, 911 and 912 dated 21.8.2009, 21.9.2009 and 21.10.2009 and the cheque in question bears No.442911 dated 21.9.2009. Then the accused says that cash payment of Rs.9000/- was given by him to one Mr. Pardeep Kumar who was asked to bring back those three cheques from Eko Electrovision after paying an amount of Rs.9000/- in cash to Eko electrovision. He further says those three cheques were taken back by Mr. Pardeep Kumar from Eko Electrovision, they were lost or were handed over by

Mr. Pardip to complainant and one of those three blank signed cheques has been misused by the complainant to lodge the present complaint. Further stated that he stopped the payment of those three lost cheques in the bank. To prove this defence of his, the accused has examined Mr. Pardip Kumar who agrees that he had taken the three blank signed cheques from Eko Electrovision after making the cash payment of Rs.9000/- but these cheques were lost from him on his way to his home. The accused has also examined one Mr. Sameer (DW2) the partner of Eko Electrovision who duly proves Ex.D1 (the retail invoice for the purchase of refrigerator by one Mr. Mukesh Narula) and Ex.D2 the statement of account of Mr. Mukesh Narula stating therein that Mukesh Kumar came to their shop and issued three cheques of Rs.3000/- each and instructed that the goods be supplied to Pardeep Kumar. This witness further states that the cheque amount was paid in cash to them, the said cheques were returned. They had received the cheques and entered the details of the cheques in their retail invoice Ex.D1. They returned back the cheques to the person who produced original receipt to them.

13. *Thus the fact that the accused had issued three blank signed cheques including the cheque in question to Eko Electrovision for the purchase of refrigerator by Mukesh Narula stands duly proved. Further it stands proved that cash payment in regard to those cheques was made and that those cheques were taken back from Eko Electrovision DW1 Pardip Kumar who had taken back those cheques from Eko Electrovision after cash payment states that those cheques were lost from him on his way to his home and he intimated this fact to accused Mukesh Kumar. After getting information, the accused stopped the payment of those three cheques (including the cheques in question)*

which fact stands proved from the testimony of DW3 Sh. Sanjiv Kumar who states that Mukesh Kumar has saving account in their branch bearing account No 750401011000745. Mukesh Kumar had filed application dated 22.10.2009 regarding of payment stop of bearing cheques No.442911 to 442913 dated 22.10.2009. Statement regarding the stop payment was entered in the bank record. He has placed on file the attested copy of above said application as Ex.D3 and attested copy of the statement regarding stop payment as Ex.D4. Then accused had also made a complaint against complainant Ram Kumar and DW1 Pardeep Kumar i.e. Mark D3 to SSP, Patiala intimating him vide complaint mark D3, all the above facts and requesting him to take action against complainant Ram Kumar and DW1 Pardip Kumar. Then the handwriting expert DW4 proves that the amount and the name of Ram Kumar complainant appearing on Ex.C2 have not been written by accused Mukesh Kumar.”

In the present case, respondent had been successful in rebutting the presumption under Section 139 of the Act. Respondent had been successful in establishing that he had issued three blank cheques for purchase of refrigerator. In this regard, relevant documents Exhibit D1-retail invoice of the purchase of refrigerator by Mukesh Narula and Exhibit D2-statement of account maintained by Mukesh Narula were duly proved on record. Pardeep Kumar who had made the payment in cash qua the purchase of refrigerator, was also examined by the respondent. The said witness further deposed that the cheque in question was lost by him. The cheque number in question alongwith numbers of other two cheques, are duly

mentioned in retail invoice (Exhibit D1). In this background, learned trial Court rightly came to the conclusion that the cheque in question had been mis-used by the complainant.

The reasons given by the trial Court while ordering the acquittal of the respondent, are sound reasons and call for no interference.

Their lordships of the Supreme Court in **Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealing with an appeal against acquittal, has opined as under:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in **Ashok Kumar v. State of Rajasthan, 1991(1) SCC 166**, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

To the same effect is the ratio of the judgments of the Supreme Court in **State of Goa v. Sanjay Thakran (2007) 3 SCC 755** and in **Chandrappa v. State of Karnataka, (2007) 4 SCC 415**.

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of

acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed”

Hence, no ground is made out to grant leave to file an appeal. Accordingly, this application is dismissed.

**(SABINA)
JUDGE**

February 06, 2015

m.singh